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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/801,871	03/09/2001	Jesse H. Gaytan	40700	6727
1609	7590	02/25/2005	EXAMINER	
ROYLANCE, ABRAMS, BERDO & GOODMAN, L.L.P. 1300 19TH STREET, N.W. SUITE 600 WASHINGTON,, DC 20036			LEVY, NEIL S	
			ART UNIT	PAPER NUMBER
			1616	

DATE MAILED: 02/25/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

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## Office Action Summary

**Application No.**

09/801,871

**Applicant(s)**

GAYTAN, JESSE H.

**Examiner**

Neil Levy

**Art Unit**

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 25 October 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1,3,6,8-15,18,21,24-32,35-43 and 45-60 is/are pending in the application.
- 4a) Of the above claim(s) 1,3,6,8-15,18,21 and 24-31 is/are withdrawn from consideration.
- 5) ☒ Claim(s) 58 and 60 is/are allowed.
- 6) ☒ Claim(s) 32,35-43,48-56 and 59 is/are rejected.
- 7) ☒ Claim(s) 45-47 and 57 is/are objected to.
- 8) ☒ Claim(s) 1,3,6,8-15,18,21,24-32,35-43 and 45-60 are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                        | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)               | Paper No(s)/Mail Date. _____  |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>3/19/09</u>   | 6) <input type="checkbox"/> Other: _____                                    |

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 1, 3, 6, 8-15, 18, 21, 24-31 stand withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected invention, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in the reply filed on 7.

The composition is not patentable over the cited art, thus, these claims were not examined.

Claims 32, 35, 36, 42, 49, 51, 52, 59 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over JP07-29180 Masahiko et al .

Tr Anselation shows polyoxyethylene polyether [0008] suitable at .05-5% with acephate [0006] in water as solvent formed as water soluble granule [0009], thus, solid at room temperature, solvent was water, residual amounts might be present, but are unspecified and would be expected to be < 1%, suite drying was done to obtain a water soluble granule of a water soluble pesticide (Examples). Claim 42 is met, as the composition is here, regardless of how formed.

Claims 32, 35, 36, 41-43, 49-56, 59 are rejected under 35 U.S.C. 103(a) as being unpatentable over Chan et al 570067, with ICI Dictionary 65.

The rejection of record <sup>1</sup>As maintained. Contrary to applicant's arguments, Pluronic is shown (ICI pp. 774,775) to be polyoxamers<sup>2</sup> of the instant, thus inclusive of the instant M.P.s.

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Also, solvents, while not preferred, are permitted. Water is seen as present with the pluronic. (col. 5, top), but the extruded pellets are ~~dried~~ (Table) to < 1% water. The instant non-critical ~~level~~.

Silica is known as anticaking additive (col. 1, lines 26-32) and is used at low amounts to make technical grade orthene<sup>P</sup>, of ~~over 97%~~ acephate. Thus, obvious to one to utilize, if needed in processing (col. 5, bottom).

Claims 36-40, 48 are rejected under 35 U.S.C. 103(a) as being unpatentable over Chan et al 570066 with Kishimoto et al 4150155.

Chan (above) discloses the instant invention, and alludes to non-aqueous solvents as known to be utilized in acephate pelleting, but discloses only methylene chloride (example). The pellet is shown as dried, thus, solvent remains in only residual amounts.

It would be obvious to one of ordinary skill in the art desiring to utilize a granular Acephate compositions, to utilize an appropriate solvent in processing of the pellet.

Claims 45-47, 57 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Claims 58, 60 are allowed.

Applicant's arguments filed on 10/25/04 have been fully considered but they are not persuasive. Applicants remarks, amendments and references added, while appreciated, do not overcome the prior art. The JP patents show, along with previously cited art, that a variety of means to achieve pelleted or granular toxic acephate and

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similar pesticides are art recognized and utilized. The instant claims are to solid compositions. The methods of achieving and intended function not seen as of patentable distinction.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Neil Levy whose telephone number is (571) 272-0619. The examiner can normally be reached on Tuesday through Friday 7 AM to 5:30 Pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gray Kunz can be reached on (571) 272-0887. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Levy/LR  
February 23, 2005



NEIL S. LEVY  
PRIMARY EXAMINER